

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(CONDUCTED THROUGH VIRTUAL COURT)**

**BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.650/Ind/2019
(Assessment Year: 2007-08)

Deputy Commissioner of Income Tax-2(1), Aayakar Bhawan, Ujjain	Vs.	Shri Santosh Agrawal, Prop. M/s. Santosh Enterprises, 46, Azad Nagar, Ujjain
PAN No.AESPA1841B		
(Appellant)	..	(Respondent)

Appellant by :	Shri Harshit Bari, Sr. DR
Respondent by:	Shri Girish Agrawal & Miss Nisha Lahotia, ARs

Date of Hearing	08.04.2021
Date of Pronouncement	28 .06.2021

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the Revenue is directed against the order dated 05.02.2019 passed by the Ld. CIT(A), Ujjain arising out of the order dated 29.09.2017 passed by the ACIT-2(1), Ujjain under Section 143(3)/254 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for A.Y. 2007-08.

2. We have heard the respective parties and perused the relevant materials available on record.

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3. The issue involved in this particular case is relating to addition of Rs. 8,09,567/- on account of under valuation of closing stock of tea bags. The said addition was deleted by the Ld. CIT(A). Hence, the instant appeal before us.

4. The assessee is a wholesale dealers of tea bags whose assessment under Section 143(3) was completed upon assessing income at Rs. 6,52,300/-. Subsequently an order dated 27.03.2012 under Section 263 was issued directing the AO to call for the details of the tea purchase, tea sold, closing stock, the extent of damage and the manner of its quantification by the insurance authorities. The Ld. AR was further directed to examine the details and to conclude the said proceeding. The Ld. AO concluded the said proceeding on 31.01.2013 assessing the income at Rs. 15,81,353/- including addition of Rs. 8,09,567/- on account of under valuation of closing stock. Relevant to mention that the books of account for the impugned year were duly audited under Section 44AB of the Act; no adverse remarks and/or observation to that effect is forthcoming from the said audit report.

However, such addition of Rs. 8,09,567/- was further confirmed by the Ld. CIT(A) upon which an appeal before the Ld. Tribunal was preferred. After carefully consideration of the matter the Ld. Tribunal has been pleased to set-aside the issue to the file of the Ld. AO with a direction upon him to verify the claim of the assessee and to decide the matter keeping in view the decision of the Hon'ble Apex Court in the case of V.K.J. Builders & Contractor Pvt. Ltd. vs. CIT, reported in 318 ITR 204(SC).

5. It appears from the records that the detail of closing stock, purchases and sales were duly submitted before the Ld. AO during the course of proceeding under Section 143(3) r.w.s. 263 of the Act. It is the case of the

assessee that the opening stock of the impugned year including the 7517 kg of damaged stock of tea bags remained unsold even during the year. The stock was damaged in A.Y. 2006-07 due to heavy rains. In order to substantiate the same, the news paper cutting were duly submitted before the Ld. AO to corroborate such fact of heavy rains during that time by the assessee. The quality of damaged stock was very low and therefore, the same could not be sold as the plea taken by the assessee. It is relevant to mention that insurance claim of the damaged stock lodged with New India Insurance Company Ltd. settled in 2006-07 at an amount of Rs. 85,000/- as and the same was received towards settlement of claim from the New India Insurance Company in A.Y. 2006-07 the entire details whereof were duly placed before the authorities below along with the details of sales purchases and the closing stock for A.Y. 2007-08 including the damage stock of 7517 kg from A.Y. 2006-07. The said damage stock was sold on 02.11.2016 i.e. A.Y. 2017-18 @ Rs. 6 per kg to Ramchandra Suvasra. Details of the above is appearing at Page 33 of the Paper Book as filed before us. In fact, considering the entire aspect of the matter the Ld. CIT(A) observed the following while deleting the addition:-

“3.1 The appellant was engaged in the business of wholesale tea. The appellant had audited its books of account. The appellant has pleaded that there was heavy rain fall in A.Y. 2006-07. Due to heavy rain fall, some tea bags were damaged and the valuation of the same has been taken by the appellant at Rs. 6/kg. The AO has mentioned in its order that the appellant had failed to substantiate its claim. In absence of any corroborative evidence, the AO had made the addition to the appellant’s income.

3.2 This is fact in this case that the Hon’ble Bench of ITAT, Indore had set aside the said issue to the AO’s file. The appellant has submitted the copy of fire insurance claim form and claim received form during the appellate proceedings. Further, the appellant has also submitted supportive documents i.e. copy of ledger account regarding its claim. It is clear from the said documents that the stock of tea bag of the appellant was damaged and due to the said reasons, the valuation of the said stock was taken in lesser price than that of its actual price. Further, the appellant had sold the said stock at rate of 6 Rs/kg to Ramchandra Suvasra. The appellant had also filed the confirmation of the said person wherein he had accepted to purchase the said damaged stock @ 6 Rs/kg.

3.3 Hence, in view of the above facts and circumstances of the case, the appellant has justified its claim after submitting relevant documents regarding its claim. Hence,

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the addition so made by the AO by disallowing under valuation of closing stock is hereby deleted and accordingly, this ground of appeal is hereby allowed.”

6. Thus, it appears that in view of the special facts and circumstances of the case particularly the damaged stock due to heavy rainfall sold on 02.11.2016 and further that the claim of such damaged stock and subsequent settlement which took place between the assessee and the New India Insurance Company Ltd. in A.Y. 2006-07 supported by corroborative evidence keeps no option for disallowance and addition thereof as made by the Ld. AO is, therefore, not sustainable. Taking into consideration this particular aspect of the matter we do not find any ambiguity in the order passed by the Ld. CIT(A) for deleting the addition so as to warrant interference. Hence, the Revenue's appeal is dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

This Order pronounced in Open Court on 28 /06/2021

Sd/-

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER
Ahmedabad; Dated 28/06/2021
TANMAY, Sr. PS

(MADHUMITA ROY)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Indore

1. Date of dictation 08.06.2021
2. Date on which the typed draft is placed before the Dictating Member 08.06.2021
3. Other Member.....
4. Date on which the approved draft comes to the Sr.P.S./P.S .06.2021
5. Date on which the fair order is placed before the Dictating Member for pronouncement .06.2021
6. Date on which the fair order comes back to the Sr.P.S./P.S .06.2021
7. Date on which the file goes to the Bench Clerk .06.2021
8. Date on which the file goes to the Head Clerk.....
9. The date on which the file goes to the Assistant Registrar for signature on the order.....
10. Date of Despatch of the Order.....